IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,	)	**No. 26989-2-III**
Respondent,	)	
	)	**Division Three**
v.	)	
ARNOLD LEE DAVIS JR.,	)	
	)	**UNPUBLISHED OPINION**
Appellant.	)	

Schultheis, C.J. — Arnold Davis Jr. appeals his conviction of second degree assault while armed with a deadly weapon. He contends (1) the evidence is insufficient to support the deadly weapon verdict, (2) the State failed to prove that he was not acting in self-defense, (3) a police officer improperly commented on a witness's credibility, and (4) the trial court erred in imposing a standard range sentence. Mr. Davis raises additional issues in his statement of additional grounds. We affirm.

FACTS

In June 2007, the State charged Mr. Davis with first degree assault, alleging that on May 28, 2007, with intent to inflict great bodily harm, Mr. Davis intentionally

assaulted Ryan Patchen with a deadly weapon.

At trial, witnesses gave different versions of the incident. Mandy Thomason testified that Mr. Davis and his cousin, Jeffrey Ingram, had argued about a stolen stereo. Mr. Ingram, who was angry with Mr. Davis on the day in question, asked Mr. Davis to move Kiana Steele's car from Mr. Ingram's driveway. Ms. Thomason testified that during the early morning of May 28, Mr. Davis knocked on Mr. Ingram's front door. She stated that when Mr. Ingram opened the door, Mr. Davis ran off but soon returned. She saw Mr. Patchen leave the living room and join Mr. Ingram outside. However, she remained inside and did not see the subsequent altercation. Shortly thereafter, she saw a bleeding Mr. Patchen run in the house, stating that Mr. Davis had stabbed him.

Mr. Ingram testified that during the period in question he was angry with Mr. Davis for spreading rumors about him. He stated that as soon as he opened the door, Mr. Davis ran across the street to a parked car where Ms. Steele was standing. Mr. Ingram chased Mr. Davis a short distance and then returned to the house and stood outside. Mr. Patchen joined Mr. Ingram outside. At some point shortly thereafter, Mr. Davis returned and began fighting with Mr. Patchen. Mr. Ingram stated that the fight lasted about a minute and that he did not see a weapon. Mr. Ingram did not join the fight because it appeared Mr. Patchen was winning. When the fight broke up, Mr. Ingram realized that Mr. Patchen was injured.

Mr. Patchen testified that he was sleeping on the couch in Mr. Ingram's living room on the morning of May 28. He woke up when he heard Mr. Ingram answer the door. He stated that he had seen Mr. Davis before the incident but had not met him. He followed Mr. Ingram outside and had been standing with him for about 5 to 10 minutes when Mr. Davis returned and ran at Mr. Patchen. Mr. Patchen testified that he pushed Mr. Davis away and "probably hit him once, but that was it and then I ran away." Report of Proceedings (RP) at 104-05. He stated they were locked together in a struggle for about 10 to 20 seconds and when they separated he noticed blood on his shirt. As he walked away, he saw what "looked like a knife" in Mr. Davis's hand. RP at 107. Mr. Patchen stated he was unarmed.

Ms. Steele's version of the incident was different. She stated that she accompanied Mr. Davis to Mr. Ingram's front door. Ms. Steele claimed that when Mr. Ingram opened the door he began yelling at Mr. Davis and chased him away. When Mr. Davis returned to the area, she heard Mr. Patchen yell at Mr. Davis and saw Mr. Patchen run toward Mr. Davis. According to Ms. Steele, Mr. Patchen was the aggressor, grabbing Mr. Davis and taking him to the ground. She saw them fight on the ground for 5 to 10 seconds and then heard Mr. Patchen say he thought he had been stabbed. She stated that she was standing a few feet from the altercation and never saw a knife.

Spokane Police Officer Brian Eckersley interviewed Ms. Steele shortly after the

incident. He testified that beyond a general description of the incident, Ms. Steele was not able to answer specific questions about the fight and appeared to be withholding information. Defense counsel objected. The trial court allowed the officer to continue. Officer Eckersley testified that Ms. Steele's inability to provide details about the altercation was a sign that a person is "being deceptive or holding back information." RP at 217.

Dr. Rana Ahmad, a trauma surgeon who evaluated Mr. Patchen in the emergency room, described Mr. Patchen's injuries. He testified that Mr. Patchen had six stab wounds that were "consistent with . . . either a knife or something sharp." RP at 240. One of the stab wounds penetrated the chest cavity, which resulted in a partial collapse of Mr. Patchen's lung. He characterized this wound as a "significant injury" and potentially lethal. RP at 241. Another wound entered the peritoneal cavity, lacerating Mr. Patchen's liver. Mr. Patchen's wounds did not require surgery.

Detective John Miller testified that the stab wounds on Mr. Patchen's arms were "defensive-type wounds." RP at 281. He explained, "when you're being assaulted it's more or less human nature to cover up, especially the trunk and head. And for that reason the extremities oftentimes receive collateral injury from the assault." RP at 282.

The jury convicted Mr. Davis of second degree assault with a special finding that he was armed with a deadly weapon.

At sentencing, the State asked for a high-end standard range sentence of 41 months. Mr. Davis asked the court for a low-end standard range sentence based on the failed self-defense claim, pointing out that the jury rejected the first degree assault charge. The court found that the standard range was 34 to 41 months and imposed a midrange sentence of 38 months. Mr. Davis appeals his conviction and sentence.

ANALYSIS

Mr. Davis first contends that the evidence was insufficient to support the special finding that he was armed with a deadly weapon during the assault, pointing to the lack of eyewitness testimony that a weapon was present. He suggests, "Mr. Patchen as the aggressor to the altercation arguably could have been the one with the weapon and during the course of rolling around on the ground with Mr. Davis caused his own self-inflicted injuries." Br. of Appellant at 21. The State responds that the jury was entitled to infer from the severity of Mr. Patchen's stab wounds that Mr. Davis used a deadly weapon during the assault.

"A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom." *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). Evidence is sufficient to support a conviction if any rational trier of fact could have found that the essential elements of the crime had been proved beyond a reasonable doubt. *State v. Dent*, 123 Wn.2d 467, 481-82, 869 P.2d 392 (1994).

The legislature has defined a deadly weapon as "any other weapon, device, instrument, article, or substance, . . . which, under the circumstances in which it is used, attempted to be used, or threatened to be used, is readily capable of causing death or substantial bodily harm." RCW 9A.04.110(6). Substantial bodily harm includes "bodily injury which involves a temporary but substantial disfigurement." RCW 9A.04.110(4)(b). The presence of marks on the skin may indicate a temporary but substantial disfigurement. *State v. Ashcraft*, 71 Wn. App. 444, 455, 859 P.2d 60 (1993). In determining whether a weapon is "readily capable of causing death or substantial bodily harm," we look to the circumstances under which it was used, including the degree of force, the part of the body to which it was applied, and the injuries actually inflicted. *State v. Holmes*, 106 Wn. App. 775, 781-82, 24 P.3d 1118 (2001).

Here, Mr. Patchen testified that immediately after the assault he saw what appeared to be a knife in Mr. Davis's hand. Dr. Ahmad testified that Mr. Patchen had six stab wounds that were consistent with a sharp object or a knife and that the sharp object punctured Mr. Patchen's lung and lacerated his liver. He also testified that these wounds were potentially lethal. We conclude that these injuries were serious enough to cause substantial bodily harm. Viewing the evidence in the light most favorable to the State, the jury could reasonably infer that Mr. Davis was armed with a deadly weapon during the assault.

Next, Mr. Davis argues that the State did not present sufficient evidence to disprove that he was acting in self-defense. He maintains that Mr. Patchen was the aggressor, pointing to Ms. Steele's testimony that Mr. Patchen initiated the fight by running toward Mr. Davis.

A criminal defendant bears the initial burden of providing some evidence of self-defense. Once self-defense is properly raised by a defendant in an assault prosecution, the State is obligated to prove beyond a reasonable doubt that the defendant's use of force was unlawful or without justification. *State v. Acosta*, 101 Wn.2d 612, 683 P.2d 1069 (1984).

The jury was instructed that a person is entitled to defend himself if he "believes in good faith and on reasonable grounds that he is in actual danger of great bodily harm." Clerk's Papers (CP) at 291. It was also instructed that "if you find beyond a reasonable doubt that the defendant was the aggressor, and that defendant's acts and conduct provoked or commenced the fight, then self-defense is not available as a defense." CP at 293.

Here, the jury heard sufficient testimony that Mr. Davis was the aggressor. Mr. Patchen testified that Mr. Davis ran at Mr. Patchen and that Mr. Patchen tried to push Mr. Davis away. During the ensuing fight, the evidence shows that Mr. Davis stabbed Mr. Patchen who was unarmed. Mr. Ingram testified that the fight ensued after Mr. Davis

returned to Mr. Ingram's house and Detective Miller characterized the wounds on Mr. Patchen's arms as "defensive-type wounds." RP at 281.

Although Ms. Steele testified that Mr. Patchen initiated the fight by grabbing Mr. Davis first, the jury was not required to believe her. The jury was free to make credibility determinations and draw its own conclusions. *State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990). The jury was also free to consider circumstantial evidence such as Mr. Davis's flight as inconsistent with a person acting in self-defense. *State v. Bolar*, 118 Wn. App. 490, 509, 78 P.3d 1012 (2003). Viewing the evidence in the light most favorable to the State, the evidence was sufficient to meet the State's burden of proving the absence of self-defense.

We next address whether the trial court erred in allowing Officer Eckersley to testify that he believed Ms. Steele was deceptive and withholding information. Mr. Davis argues, "Because Officer Eckersley's testimony involved issues of credibility which were reserved strictly for the trier of fact, his testimony was improper[ly] admitted and constituted an impermissible opinion on an ultimate issue invading the province of the jury." Br. of Appellant at 26.

"[N]o witness may give an opinion on another witness' credibility." *State v. Carlson*, 80 Wn. App. 116, 123, 906 P.2d 999 (1995). Comments on the credibility of a key witness may also be improper because issues of credibility are reserved for the trier

of fact. *City of Seattle v. Heatley*, 70 Wn. App. 573, 577, 854 P.2d 658 (1993); *State v. Demery*, 144 Wn.2d 753, 759, 30 P.3d 1278 (2001). "Opinion testimony" is evidence given at trial, under oath, that is based on one's belief or idea rather than on direct knowledge of the facts at issue. *Demery*, 144 Wn.2d at 759-60. We review a trial court's decision to admit opinion testimony for abuse of discretion. *State v. Ortiz*, 119 Wn.2d 294, 308, 831 P.2d 1060 (1992).

To determine whether testimony constitutes an impermissible opinion on guilt or credibility, we consider the type of witness, the nature of the testimony and charges against the accused, the type of defense, and the other evidence. *Demery*, 144 Wn.2d at 759. The jury may especially be likely to be influenced by opinion testimony from a police officer, whose opinion may carry a special aura of reliability. *Id.* at 762-63.

Mr. Davis objected to the following testimony:

> [STATE:] Officer Eckersley, I believe the question that was posed to you was: If you believed Miss Steele was holding back information?
> [ECKERSLEY:] Yes, I did.
> [STATE:] Okay. Why did you believe she was holding back information?
> [ECKERSLEY:] Her description and her statements regarding the fight itself were minimal. Her answers were noncommittal. And to be able to witness a fight such as this, which is the most significant thing going on at the time, over my experience interviewing people, people are usually able to provide much more specific details about that incident. Again, like how many punches were thrown, by who, roughly, right hand or left hand . . . But her statement about it was extremely vague. She would only say that one came at one, someone came at the other and they wrestled around.
> . . . I couldn't get any further details from her than that. She was

> able to provide a lot of details about other events: About why the argument ensued and when they went there and where they went after that and so forth. *So if somebody can provide a lot of details about insignificant things, but then not very many details about something that is significant, then that's a sign they're being deceptive or holding back information.*

RP at 216-17 (emphasis added).

We conclude that the foregoing testimony constituted a comment on Ms. Steele's credibility. The only inference is that Officer Eckersley believed Ms. Steele was dishonest during the interview. His testimony is an implied opinion that Ms. Steele was deceptive and evasive. As such, it was improperly admitted. The issue of Ms. Steele's credibility was for the jurors alone to decide and any indirect statement or inference as to her credibility was improper.

However, the admission of the testimony was harmless. First, the jury was instructed that it was the sole judge of the credibility of witnesses. We presume the jury followed its instructions. *State v. Hanna*, 123 Wn.2d 704, 711, 871 P.2d 135 (1994). Additionally, the prosecutor did not reinforce the improper opinion testimony by referencing it during closing argument. *State v. Jungers*, 125 Wn. App. 895, 106 P.3d 827 (2005).

Furthermore, "overwhelming untainted evidence" supports the jury's verdict. *State v. Guloy*, 104 Wn.2d 412, 426, 705 P.2d 1182 (1985). Although Ms. Steele's testimony supports Mr. Davis's self-defense claim, this case boils down to more than Ms.

Steele's word against Mr. Patchen's. There was evidence that Mr. Davis was the aggressor, including evidence that Mr. Patchen's wounds were "defensive" and that Mr. Davis fled after the incident. Furthermore, nothing in the record reasonably supports a finding that the use of a knife was justified. Given the overwhelming amount of properly admitted evidence, the exclusion of Officer Eckersley's testimony would not have resulted in a different verdict.

Finally, Mr. Davis contends that the trial court erred in failing to impose a sentence below the standard range based on the mitigating factor of Mr. Davis's failed self-defense claim. Generally, a standard range sentence may not be appealed. *State v. Williams*, 149 Wn.2d 143, 146, 65 P.3d 1214 (2003). But a standard range sentence can be appealed if the sentencing court failed to comply with procedural requirements of the Sentencing Reform Act of 1981 or constitutional requirements. *State v. Osman*, 157 Wn.2d 474, 481-82, 139 P.3d 334 (2006). We will review a sentence if a sentencing court fails to exercise its discretion at all or relies on an impermissible basis for refusing to impose an exceptional sentence. *State v. Garcia-Martinez*, 88 Wn. App. 322, 328-29, 944 P.2d 1104 (1997).

Mr. Davis's argument is meritless. First, he mischaracterizes the sentencing hearing. Contrary to his claim, he did not request an exceptional sentence below the standard range; he asked the court to impose a low-end standard range sentence based on

his failed claim of self-defense. Further, he does not explain how the court's imposition of a midrange standard range sentence was a failure to exercise any discretion or was otherwise unconstitutional. The court appropriately exercised its sentencing discretion. There was no sentencing error.

Statement of Additional Grounds (SAG)

In his SAG, Mr. Davis states that he had no knowledge that Mr. Patchen was at Mr. Ingram's house and that he had no intention of getting into a fight with Mr. Patchen. He also states, "I was under the impression that it was in fact okay to go to Mr. Ingram's house by Mr. Ingram himself. I had no intentions on causing anyone any bodily harm. I was not the aggressor or was I aggressive in any way."

Mr. Davis's factual claims are matters outside the record before us. As such, we are unable to address them. An appellate court must confine itself to matters in the record. *Grobe v. Valley Garbage Serv., Inc.*, 87 Wn.2d 217, 228-29, 551 P.2d 748 (1976). Furthermore, Mr. Davis does not identify issues for our review or cite to any case law. While a SAG need not contain references to the record or legal citation, it will not be considered "if it does not inform the court of the nature and occurrence of alleged errors." RAP 10.10(c). Because Mr. Davis's SAG fails to inform us of the nature of any errors, we are unable to consider it.

Affirmed.

A majority of the panel has determined that this opinion will not be printed in the Washington Appellate Reports but it will be filed for public record pursuant to RCW 2.06.040.

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Schultheis, C.J.

WE CONCUR:

_____
Sweeney, J.

_____
Brown, J.